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POINT PAPER

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SUBJECT: Protecting Contractor Proprietary Data

PURPOSE: Emphasize proprietary data protection and use considerations.

FACTS:

- < 10 U.S.C. § 2386 enables Contracting Officers to acquire rights to use proprietary technical data covering privately developed items, components and processes.
- < Proprietary technical data will bear an appropriate legend identifying its proprietary status, and will be subject to usage restrictions as well as data protection safeguards.
- < The importance of strict compliance with these restrictions and safeguards cannot be overemphasized, since failure to comply can result in significant Army financial liability and jeopardize the Army's right to continue using the technology. *AMC is currently involved in a \$70 million controversy over an alleged failure to follow the rules in this area.*
- < Procedures
 - < In dealing with proprietary technical data, the usage restrictions will depend on the particular data rights acquired.
 - < 'Limited Rights Data' is generally restricted to use and disclosure within Government, with manufacture rights precluded.
 - < 'Government Purpose Rights' enables the Government to use and disclose the data to others for Government purposes; but the data should never be used for commercial purposes.
 - < 'Specific License Agreement Rights' results from negotiations and may include atypical conditions and restrictions which require legal office coordination.

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- < When the Government has acquired the right to disclose proprietary data outside the Government, such disclosure will usually be subject to an appropriate nondisclosure agreement signed by the recipient. The agreement prohibits the recipient from using the data for any other purposes.
- < Unauthorized use and disclosure of proprietary data by the Government can subject the Government to liability for damages, and may result in criminal and civil sanctions to individual government employees. It should be meticulously avoided.

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